

# **BOARD OF ZONING APPEALS**

## **Minutes**

**September 24, 2002**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on September 24, 2002, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, JAMES SKELTON, ERMA MARKHAM, JOHN ROGERS. The following Board members were absent: RANDY PHILLIPS, BICKLEY FOSTER.

ELIZABETH HARLENSKE -- Law Department present

RANDY SPARKMAN -- Office of Central Inspection present.

The following Planning Department staff members were present:

DALE MILLER Secretary,

SCOTT KNEBEL Assistant Secretary,

ROSE SIMMERING, Recording Secretary.

RUANE: Calls meeting to order. Let's look at meeting minutes from 8-27-02.

**SKELTON moves, ROGERS seconds to approve August 27, 2002 BZA meeting minutes.**

**Motion Carries 4-0.**

**KNEBEL, Planning staff:** Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

### **SECRETARY'S REPORT**

**CASE NUMBER:** BZA2002-00057

**OWNER/APPLICANT:** Ronald E. Dunn; Anna M. Loehr; Isaac E. and El Dora Neufeld; Damon E. and Kristina D. Baker; Ralph L. Powers; Mitchell and Alice Parent; Lyle A. Baker and Ethel Clark; Dorothy M. Hamlin Johnson

**AGENT:** William Cather, Attorney at Law

**REQUEST:** Variance to Sec. III-B.6.d.(3) of the Unified Zoning Code to reduce the front setback for a carport on each of ten lots

**CURRENT ZONING:** "TF-3" Two-Family

**SITE SIZE:** 2.34 Acres

**LOCATION:** East and west of Palisade on Blake

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicants are requesting a variance to the reduce the front setback for a carport on their individually-owned properties zoned "TF-3" Two-Family. Each of the applicant's properties

(10 total) have an open carport that was constructed without a building permit and encroaches into the front setback. The subject properties are located along Blake with eight of the properties located in the block west of Palisade and two of the properties located in the block east of Palisade. The subject properties are 412 W. Blake, 422 W. Blake, 502 W. Blake, 508 W. Blake, 519 W. Blake, 526 W. Blake, 532 W. Blake, 601 W. Blake, 608 W. Blake, and 2234 S. Greenway.

In the "TF-3" Two-Family zoning district, Sec. III-B.6.d.(3) of the Unified Zoning Code requires a front building setback of 25 feet. The carports on the applicants' properties are constructed such that they encroach into the front setback area by 15 to 20 feet. The carports were constructed 20 years ago or more, and with the exception of one property, the carports were present on the property when it was acquired by the current owner. The applicants submitted the attached statement pertaining to the five conditions for granting the variance requested.

**ADJACENT ZONING AND LAND USE:**

NORTH	"TF-3"	Single-family
SOUTH	"TF-3"	Single-family
EAST	"TF-3"	Single-family
WEST	"TF-3"	Single-family

**UNIQUENESS:** It is the opinion of staff that these properties are unique, inasmuch as these properties are developed with 10 carports in the front setback within only a two block area. It is the opinion of staff that no other area within the low-density residential zoning districts is developed in such a fashion.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the carports are well constructed and well maintained and have not caused any apparent adverse impacts on adjacent properties in the 20 or more years since they were constructed.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations will constitute an unnecessary hardship upon the applicants, inasmuch as the carports were a pre-existing condition on the properties when they were acquired and requiring the current owners to remove the carports would be a hardship given the owners ages and fixed incomes.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as the carports are of a similar design and are located in area that is uniquely developed.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

**RECOMMENDATION:** Should the Board determine that the five conditions necessary for the granting of the variance exist, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The subject properties shall be developed and required to comply with all building and zoning code requirements, except that the existing carport on each property shall be permitted to encroach into the front setback to its current extent.

2. A building permit for the carport on each property shall be acquired by the applicants within 60 days of granting the variance. A plot plan for each property that establishes the existing encroachment of the carport into the front setback shall be submitted to the Office of Central Inspection with each building permit application. Upon verification of the extent of each carport's existing encroachment into the front setback, the Office of Central Inspection shall transmit a copy of each plot plan to the Secretary of the Board for inclusion in the variance case file.
3. The sides of the carports shall not be enclosed at any time.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicants have failed to comply with any of the foregoing conditions.

**RUANE:** We have other carport matters about the side setback line. How is this so much more unique?

**KNEBEL:** I think the uniqueness is that the same carport is installed on multiple houses on the same block. We feel like this is a situation that is very uncommon.

**WILLIAM CATHER, Attorney at Law:** My clients are neighbors in this close compact area. They are in the average age of 70. We would concur with the recommendations of staff. With the exception of one of these properties, all of these were bought with the carports already there.

**RUANE:** Anyone else either for or against this case here today that would like to be heard on this matter? We will bring the matter up to the bench. I think we have a well put together presentation. Any discussion?

**SKELTON:** I am going to vote for the variance Mr. Chairman.

**ROGERS MOVES SKELTON SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT FOR BZA2002-57.**

**RUANE:** I believe this is an appropriate variance since this happened so long ago.

**MOTION carries 4-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2002-00057**

**WHEREAS,** Ronald E. Dunn; Anna M. Loehr; Isaac E. and El Dora Neufeld; Damon E. and Kristina D. Baker; Ralph L. Powers; Mitchell and Alice Parent; Lyle A. Baker and Ethel Clark; Dorothy M. Hamlin Johnson (owner/applicant); William Cather, (Attorney at Law), pursuant to Section 2.12.590.B, Code of the City of Wichita, request a variance to Section III-B.6.d.(3) of the Unified Zoning Code to reduce the front setback for a carport on each of ten zoning lots on property zoned "TF-3" Two-family Residential and legally described as follows:

Lots 1, 2, 5, 6, 8, 12, 28, and 31, Hall's Addition to Wichita, Sedgwick County, Kansas, together with Lots 7 and 9, Block A, Strawder's Addition to Wichita, Sedgwick County, Kansas.

Generally located east and west of Palisade on Blake.

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of September 24, 2002, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that these properties are unique, inasmuch as these properties are developed with 10 carports in the front setback within only a two block area. It is the opinion of staff that no other area within the low-density residential zoning districts is developed in such a fashion.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the carports are well constructed and well maintained and have not caused any apparent adverse impacts on adjacent properties in the 20 or more years since they were constructed.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the zoning regulations will constitute an unnecessary hardship upon the applicants, inasmuch as the carports were a pre-existing condition on the properties when they were acquired and requiring the current owners to remove the carports would be a hardship given the owners ages and fixed incomes.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variances would not adversely affect the public interest, inasmuch as the carports are of a similar design and are located in area that is uniquely developed.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section III-B.6.d.(3) of the Unified Zoning Code to reduce the front setback for a carport on each of ten zoning lots on property zoned "TF-3" Two-family Residential and legally described as follows:

Lots 1, 2, 5, 6, 8, 12, 28, and 31, Hall's Addition to Wichita, Sedgwick County, Kansas, together

with Lots 7 and 9, Block A, Strawder's Addition to Wichita, Sedgwick County, Kansas. East and west of Palisade on Blake.

**The variances are hereby GRANTED, subject to the following conditions:**

1. The subject properties shall be developed and required to comply with all building and zoning code requirements, except that the existing carport on each property shall be permitted to encroach into the front setback to its current extent.
2. A building permit for the carport on each property shall be acquired by the applicants within 60 days of granting the variance. A plot plan for each property that establishes the existing encroachment of the carport into the front setback shall be submitted to the Office of Central Inspection with each building permit application. Upon verification of the extent of each carport's existing encroachment into the front setback, the Office of Central Inspection shall transmit a copy of each plot plan to the Secretary of the Board for inclusion in the variance case file.
3. The sides of the carports shall not be enclosed at any time.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicants have failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 24th DAY of SEPTEMBER, 2002.**

**SPARKMAN:** J. R. is not here, and I do not have anything to add.

**Meeting adjourned 1:47 p.m.**